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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 514

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

JAMES P. MITCHELL.

No. 515

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

JAMES P. MITCHELL.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

JAMES J. LAUGHLIN,
Counsel for Respondent.

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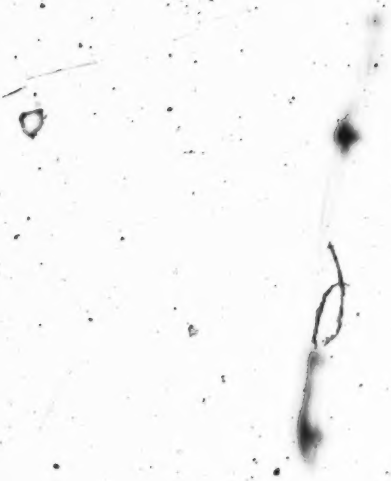

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THE UNITED STATES OF AMERICA,
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ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

Opinion Below.

The opinion of the United States Court of Appeals for the District of Columbia does not yet appear in the Federal Reporter nor in the Court of Appeals reports. It is, however, reported in volume 71, No. 50, Washington Law Reporter, pages 1274 and 1275.

Jurisdiction.

The judgments of the United States Court of Appeals for the District of Columbia were entered on October 25,

1943. No petition for rehearing was filed. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by Acts of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

Questions Presented.

1. Whether the rule of *McNabb* v. *United States*, 318 U. S. 332, makes inadmissible in evidence any confessions, verbal or oral, exacted from an accused while he was illegally confined.

2. When it is shown that the arresting officers have disregarded existing law and held an accused in a police precinct without taking him before a committing magistrate, can the courts of the United States at a criminal trial condone such law violations by receiving in evidence confessions or statements exacted from an accused under such circumstances.

3. When the rights of an accused are violated in that the arresting officers have disregarded existing law and seized property without a warrant against the will of the accused, can the Courts of the United States permit such property to be received in evidence at a criminal trial.

Statement.

Two indictments were returned in District Court and there was a verdict of guilty in each indictment in separate jury trials. By agreement of all parties the cases were consolidated in the United States Court of Appeals.

The respondent was sentenced in one case from one to three years and in the other case from one-and-a-half to four-and-a-half years, to run concurrently with each other. On appeal to the United States Court of Appeals for the District of Columbia the judgments of conviction were reversed. The opinion of the Court of Appeals rested upon

this Court's decision in *McNabb v. United States*, 318 U. S. 332.

Inasmuch as the statement in the petition is inaccurate and incomplete it is necessary to add to such statement.

Respondent at all times has denied his guilt. At his first criminal trial a motion to suppress evidence was filed and testimony was taken. In support of his motion, respondent took the stand and testified that he was arrested on October 12, 1942 and confined at police precinct No. 8 without an attorney and without a charge having been placed against him and that he was not taken before a committing magistrate until October 20, 1942 (R. 18). He further testified that he at no time authorized the police to enter his home and to take anything therefrom, and at no time consented to the police officers so doing, and no one gave any police officer such permission on his behalf. The property which the respondent wanted returned, he testified, was of the character set forth in his affidavit. Respondent further testified that he was brutally beaten by the police while in custody and a number of wounds and bruises were inflicted on his body and a tooth was knocked out. On cross-examination, the respondent testified that the property which he wanted returned included certain jewelry which belonged to his aunt and uncle.

The officers testified that the respondent gave them permission to enter his home. The motion to suppress was denied and an exception was duly noted.

At the trial respondent testified that he owned a rooming house at 1427 N Street, N. W. in the District of Columbia, which he operated, and that in the early afternoon of October 12th, 1942, an officer came to his house and stated that he was looking for a colored man named Mitchell (R. 3), and that after a few minutes the officer departed. Respondent further testified that the same evening another officer came to his home and asked him to come to a car which was

parked a short distance away. Respondent said when he got to the car with the officer he was forced to enter the car, where the other officer was seated at the wheel. The respondent asked both officers: "What is this all about?" and the officers replied: "You will soon find out." Respondent stated that he had at all times denied any participation in the housebreaking and larceny. He testified that he was beaten in the car and from time to time in the police precinct, and that on one occasion a tooth was knocked from his mouth. He testified that he was not taken to a committing magistrate until October 20, 1942 (R. 36). He testified again that he at no time authorized the police officers to visit his home. He also testified that his name was carried in the telephone directory for a considerable period of time under the name of James P. Mitchell, with an address at 1427 N Street, N. W. There was also testimony offered at the trial by a witness, Barbara Jenkins (R. 37) to the effect that she visited respondent at the police precinct some four or five days after October 12th and noticed marks and bruises about his body. His mother testified that she visited the police precinct while respondent was confined and that she observed bruises and marks on his body, and that on at least one occasion she observed him spitting blood (R-25). The mother testified that the respondent complained to her that he had been kicked in the stomach and that he had suffered severe injury (R-37). Another witness, Cosmo Testa, testified that he saw the respondent at the police precinct on the night of October 12th, 1942, where he observed certain marks and bruises on respondent's body and about his face. He further testified that the respondent's face was greatly swollen and his skin discolored, (R-37).

Argument—One and Two.

Respondent says that the opinion of the Court of Appeals is a correct statement of the law and is logical and adequate

and that the reasoning announced therein is logical and adequate and should not be departed from.

The record leaves no room for doubt that respondent was arrested on October 12th at about six or seven o'clock in the evening. That was a Monday. He could have easily been brought before a committing magistrate the following morning, Tuesday, October 13th. In the District of Columbia there is absolutely no excuse for a violation and a disregard of the mandatory provisions of the District Code. Section 140, Title 14, D. C. Code (1940 Edition) provides:

> "The several members of the police force shall have power and authority to immediately arrest, without warrant, and to take into custody any person who shall commit, or threaten or attempt to commit, in the presence of such member, or within his view, any breach of the peace or offense directly prohibited by Act of Congress, or by any law or ordinance in force in the District, *but such member of the police force shall immediately, and without delay, upon such arrest, convey in person such offender before the proper court*, that he may be dealt with according to law." (italics ours)

In the District of Columbia the United States Branch of Police Court is in session from 10:00 a. m. to 4:00 p. m. The United States Commissioner is available from 9:00 a. m. until 6 or 7:00 p. m.

Then considering further the circumstances insofar as respondent is concerned, there was no justification for not taking him before a committing magistrate on Tuesday, October 13th—certainly none for not taking him on Wednesday, October 14th—certainly none for refusing to take him on Thursday, October 15th—certainly no excuse for not taking him on Friday, October 16th—certainly none for not taking him on Saturday, October 17th, and *surely none* for not taking him on Monday, October 19th. Yet in spite of the mandatory provisions of the D. C. Code above set forth,

the provisions of which are known to all police officers, he was, in violation of his constitutional rights and in utter and reckless disregard of the law held in solitary confinement at a police precinct until October 20th. The record leaves no room for doubt that he was denied assistance of counsel and he had no one to advise him and no one to whom he could appeal for advice.

The contention is made that immediately upon respondent's arrest he made an oral confession and freely and voluntarily admitted his guilt, and was according to the police officers in a cooperative frame of mind—in fact, in an exultant mood. If the officers' story is true and the respondent was so anxious to cooperate with them and was so free and voluntary in admitting his guilt, then we may ask ourselves these questions:

1—Since he was cooperating with the police and wanted to please the police, then why did not the police obtain the confession in writing?

2—If then the respondent was so anxious to cooperate, then why did not the police officers obey the law and take him before a committing magistrate the following day?

Truthful response to these questions present obstacles well nigh insurmountable.

The respondent has maintained consistently that the statement of the police as to respondent's immediate confession upon apprehension and the officers' statement as to his willingness and readiness to cooperate with them was a story concocted and designed and devised by the police officers to evade and circumvent the ruling of this Court in the case of *McNabb* v. *United States*. It must never be forgotten that at the time respondent was arrested, the *McNabb* opinion had not yet been announced. At the time of respondent's criminal trial the *McNabb* opinion had become the law of the land. Therefore, respondent has consistently

maintained and now maintains that the circumstances of the detention of respondent in the police precinct clearly showed such a violation of respondent's constitutional and legal rights as to constitute defiance of *McNabb* v. *United States*. Therefore, if they could concoct and invent and devise a story that would relate that the accused immediately upon arrest freely and voluntarily confessed his guilt, that a later detention by the police officers of an accused would permit them to escape the castigation meted out by this Court in *McNabb* v. *United States*.

It is most unfortunate that the record does not truly reflect all the circumstances of respondent's illegal detention. Respondent was beaten by the police and held in absolute disregard of his constitutional rights and denied assistance of counsel and not accorded the provisions of the mandate of Congress requiring immediate arraignment, and then after five or six days of torture and abuse *he was forced to sign a written confession against his will*, and it was not until after the police officers had extracted and tortured from him such a confession that the police officers took him before a committing magistrate.

True it is that this confession signed by the respondent after many days of torture, abuse and cruelty did not find its way into the record, yet it can never be disputed or denied that such a confession—obtained in the face of the violation of constitutional rights—was extracted from respondent and now reposes in the files of the office of the United States Attorney for the District of Columbia.

The United States Court of Appeals for the District of Columbia found no difficulty in the solution of the problems here presented. We find this in the opinion:

> "This grows out of the fact that after appellant was arrested and brought from his home to the police station and interrogated by the officers, the confession obtained and his consent to the search given, he was

> continued under arrest for more than a week by the police without being brought before a magistrate, commissioner or court, and this in the very teeth of the statute which commands arraignment 'immediately and without delay.' It was almost this identical situation which, the Supreme Court in McNabb vs. United States, makes a confession, voluntary or involuntary, inadmissible in evidence on the trial of the case."

And the Court of Appeals in considering the applicability of the McNabb ruling said this:

> "The principle of the decision was that since the Congressional requirement that police officers take an accused person before a judicial officer for commitment with reasonable promptness was designed to avoid 'all the evil implications of secret interrogations of persons accused of crime,' and to check 'resort to those reprehensible practices known as the 'Third Degree,' the violation of the statute in 'flagrant disregard of the procedure which Congress has commanded,' was sufficient to require the exclusion of all evidence so obtained from the accused."

And then the Court of Appeals quoted from the Supreme Court decision in *McNabb* v. *United States:*

> "• • • The record leaves no room for doubt that the questioning of petitioners took place while they were in the custody of the arresting officers and before any order of commitment was made. Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of the law."

There is no doubt that the ruling of this Court in *McNabb* v. *United States* is determinative of the questions presented here. It seems most significant that in the preliminary draft of the Federal Rules of Criminal Procedure

now in the making, has this pertinent and significant requirement:

> "Rule 5. Procedure upon Arrest.
>
> (a) Appearance Before the Commissioner. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall without unnecessary delay take the person arrested before the nearest available commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States. If the arrest is made without a warrant the person making the arrest or any other person having knowledge of the facts shall forthwith make and file with the commissioner or other officer a complaint against the person arrested."

And then to dispose of the contention here, Rule 5(b) provides this:

> "(b) Exclusion of Statement Secured in Violation of Rule. No statement made by a defendant in response to interrogation by an officer or agent of the government shall be admissible in evidence against him if the interrogation occurs while the defendant is held in custody in violation of this rule."

The constitutional questions involved here are important and serious. In Scotland the interrogation of arrested persons by the police is forbidden and confessions and admissions obtained in this way are inadmissible in evidence. In England, Judges have formulated and approved rules regulating the questioning by police of a person in custody. We have no such protection in this country. The accused person is simply at the mercy of the arresting officer. Experience teaches that all of the abuses that have arisen from the unlawful detention of prisoners comes as a result of the failure of the arresting officers to obey the law. Most of the states have provisions for speedy arraignment. The

United States Code, Section 595, Title 18, requires that an accused shall be taken before a committing magistrate but the statute does not specify a certain period of time. However, Section 593, Title 18, provides that in arrest for certain types of offenses that the arresting officers take the man forthwith before a committing magistrate. No such uncertainty prevails in the District of Columbia. The language of the statute is clear. Any Judge in the District of Columbia—and there are several dozen in number—can be regarded as a committing magistrate.

Much has been said and published in years past with regard to police brutality. It has been contended since time immemorial unless the temptation is removed from the police officers—that is, under the compulsion of speedy arraignment—no headway will be made in curbing this relic of barbarism. If the criminal files of our local courts are analyzed and studied with a view to compiling statistics showing the number of criminal prosecutions against police officers for brutality to prisoners, it will invariably be seen that these brutal practices would not have been inflicted upon the prisoners had the police officers been required to take the accused immediately before a committing magistrate. When the police officers are permitted to lodge an accused in a police precinct and then forget all about the requirements of the law and shunt him from precinct to precinct and line-up to line-up, hoping that something unfavorable will turn up, the evils that result are easy to discern.

The McNabb opinion is a real challenge to honest and efficient police administration. It will cause the police officers to be alert and vigilant. It may well be that in some few isolated instances that the police may be somewhat hampered in their investigating work. Even though an occasional injustice may result, that is a small price

to pay for honest adherence to the law and to assure integrity in government.

Point Three.

We contend that the ruling of the United States Court of Appeals as to the refusal to receive in evidence property seized in violation of an accused's constitutional rights is sound indeed. If the police falsified as to the making of the oral confession by the respondent in this case, then it is safe to assume that they also falsified as to the consent given to search his home without a warrant. The trial judge erroneously refused to suppress the evidence on the strength of the officers' statement that respondent consented to the unlawful search. That was vigorously denied at all times by the respondent. It cannot be doubted that even if the consent was given, it was given while respondent was in custody and was given during the period he was deprived of the assistance of counsel. We say if there is any doubt on this point, we urge that the provisions of the Sixth Amendment guaranteeing to the accused the assistance of counsel has application here. While it is true the cases have so far construed this guarantee to cover the period only from arraignment to sentence. However, we say that a criminal prosecution begins at the moment of the arrest of the accused. If that is so, then he is entitled to the protection of the constitution from the moment of his arrest. If that is so, then the consent given—even if it was given—under the circumstances of this case—is in violation of the constitution. As to the constitutional guarantees, let us refer to the case of *Olmstead* v. *United States*, 277 U. S. 438 and with particular reference to the dissenting opinions of Justice Holmes and Justice Brandeis. It is comforting to know that Justice Brandeis lived to see his dis-

senting views become the law of the land. In *Nardone* v. *United States*, 302 U. S. 379, Justice Brandeis said this:

> "The Government makes no attempt to defend the methods employed by its officers. Indeed, it concedes that if wire-tapping can be deemed a search and seizure within the Fourth Amendment such wire-tapping as was practiced in the case at bar was an unreasonable search and seizure and that the evidence thus obtained was inadmissible."

Justice Brandeis said further in the same case:

> "Decisions of this Court applying the principle of the Boyd case (116 United States 616) have settled these things. Unjustified search and seizure violates the Fourth Amendment, whatever the character of the paper; whether the paper when taken by the federal officers was in the home, in an office or elsewhere, whether the taking was effected by force, by fraud, or in the orderly process of a court's procedure. From these decisions, it follows necessarily that the Amendment is violated by the officer's reading the paper without a physical seizure, without his even touching it; and that use, in any criminal proceedings, of the contents of the paper so examined—as where they are testified to by a federal officer who thus saw the document or where, through knowledge so obtained, a copy has been procured elsewhere—any such use constitutes a violation of the Fifth Amendment."
>
> "The protection guaranteed by the Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the

right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use, as evidence, in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the Fifth."

"* * * And it is also immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on guard to protect liberty when the Government's purposes are beneficient. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding" * * * "decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be in peril if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justified the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

Justice Holmes in the same case said this in dissent:

"We have to choose and for my part I think it a less evil that some criminals should escape than that the Government should take an ignoble part."

In *Chambers* v. *Florida*, 309 U. S. 227, this Court said:

"* * * under our constitutional system courts stand against any winds that blow as havens of refuge

for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement * * * no higher duty, no more solemn responsibility, rests upon this Court than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our constitution of whatever race, creed or persuasion."

Conclusion.

The opinion of the Court of Appeals is adequate and ample, and should not be disturbed. There is no sound reason for the granting of the petition for writs of certiorari in this case. We do not have a situation where a state court has decided a federal question of substance not theretofore determined by this Court. We do not have a case where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter. Nor do we have a case wherein the United States Court of Appeals for the District of Columbia has decided a question of general importance, or a question of substance relating to the construction or application of the Constitution, or a treaty or statute of the United States, which has not been, but should be, settled by this Court, or where the United States Court of Appeals for the District of Columbia has not given proper effect to an applicable decision of this Court. We say that the Court of Appeals adopted the only course it could take. The Court of Appeals followed the reasoning of this Court in the McNabb opinion and the judgment of that Court should not be disturbed.

The opinion of this Court in the case of *McNabb* v. *United States* was the greatest stroke for human liberty since Lord Cornwallis surrendered at Yorktown in 1783. True it is there has been some criticism from some easy-going,

slow motion arresting officers who have for the first time been stirred from their lethargy by the requirements of the McNabb opinion. When all of the hue and cry subsides it will be found that strict adherence to the requirements of the McNabb opinion as to speedy arraignment will make for honest law enforcement and will create new respect for law. After all, no one can ever complain when strict observance of the law is exacted from the arresting officers. No man in this Court—from the highest to the lowest is above the law. All should be required to obey it. We say, therefore, that there is nothing in the petition that calls for the granting of writs of certiorari and we say, therefore, that the petitions should be denied and the judgments of the United States Court of Appeals for the District of Columbia left in full force and effect.

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National Press Building,
Counsel for Respondent.

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SUPREME COURT OF THE UNITED STATES.

Nos. 514-515.—October Term, 1943.

The United States of America, Petitioner, vs. James P. Mitchell.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[April 24, 1944.]

Mr. Justice Frankfurter delivered the opinion of the Court.

Under each of two indictments for housebreaking and larceny, the defendant Mitchell was separately tried and convicted, but his convictions were reversed by the Court of Appeals, 138 F. 2d 426, solely on the ground that the admission of testimony of Mitchell's oral confessions and of stolen property secured from his home through his consent was barred by our decision in *McNabb* v. *United States*, 318 U. S. 332. In view of the importance to federal criminal justice of proper application of the *McNabb* doctrine, we brought the case here. 321 U. S. —.

Practically the whole body of the law of evidence governing criminal trials in the federal courts has been judge-made. See *United States* v. *Reid*, 12 How. 361, and *Funk* v. *United States*, 290 U. S. 371. Naturally these evidentiary rules have not remained unchanged. They have adapted themselves to progressive notions of relevance in the pursuit of truth through adversary litigation, and have reflected dominant conceptions of standards appropriate for the effective and civilized administration of law. As this Court when making a new departure in this field took occasion to say a decade ago, "The public policy of one generation may not, under changed conditions, be the public policy of another." *Funk* v. *United States*, *supra* at 381. The *McNabb* decision was merely another expression of this historic tradition, whereby rules of evidence for criminal trials in the federal courts are made a part of living law and not treated as a mere collection of wooden rules in a game.

That case respected the policy underlying enactments of Congress as well as that of a massive body of state legislation which, whatever may be the minor variations of language, require that

arresting officers shall with reasonable promptness bring arrested persons before a committing authority. Such legislation, we said in the *McNabb* case, "constitutes an important safeguard—not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the 'third degree' which, though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime. It reflects not a sentimental but a sturdy view of law enforcement. It outlaws easy but self-defeating ways in which brutality is substituted for brains as an instrument of crime detection. A statute carrying such purposes is expressive of a general legislative policy to which courts should not be heedless when appropriate situations call for its application." 318 U. S. at 344.

In the circumstances of the *McNabb* case we found such an appropriate situation, in that the defendants were illegally detained under aggravating circumstances: one of them was subjected to unremitting questioning by half a dozen police officers for five or six hours and the other two for two days. We held that "a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law. Congress has not explicitly forbidden the use of evidence so procured. But to permit such evidence to be made the basis of a conviction in the federal courts would stultify the policy which Congress has enacted into law." 318 U. S. at 345. For like reasons it was held in the *Nardone* case that where wiretapping is prohibited by Congress the fruits of illegal wiretapping constitute illicit evidence and are therefore inadmissible. *Nardone* v. *United States*, 302 U. S. 379; 308 U. S. 338. Inexcusable detention for the purpose of illegally extracting evidence from an accused, and the successful extraction of such inculpatory statements by continuous questioning for many hours under psychological pressure, were the decisive features in the *McNabb* case which led us to rule that a conviction on such evidence could not stand.

We are dealing with the admissibility of evidence in criminal trials in the federal courts. Review by this Court of state con-

victions presents a very different situation, confined as it is within very narrow limits. Our sole authority is to ascertain whether that which a state court permitted violated the basic safeguards of the Fourteenth Amendment. Therefore, in cases coming from the state courts in matters of this sort, we are concerned solely with determining whether a confession is the result of torture, physical or psychological, and not the offspring of reasoned choice. How difficult and often elusive an inquiry this implies, our decisions make manifest. And for the important relation between illegal incommunicado detention and "third-degree" practices, see IV, Report, National Commission on Law Observance and Enforcement (better known as the Wickersham Commission) (1931) pp. 4, 35 *et seq.*, 152; and the debates in the House of Commons on the Savidge case, 217 H. C. Deb. (5th ser. 1928) pp. 1216-1220, 1303-1339, 1921-1931, and Inquiry in Regard to the Interrogation by the Police of Miss Savidge, Cmd. 3147 (1928); Report of the Royal Commission on Police Powers and Procedure, Cmd. 3297 (1929). But under the duty of formulating rules of evidence for federal prosecutions, we are not confined to the constitutional question of ascertaining when a confession comes of a free choice and when it is extorted by force, however subtly applied. See *United States* v. *Oppenheimer*, 242 U. S. 85, 88. The *McNabb* decision was an exercise of our duty to formulate policy appropriate for criminal trials in the federal courts. We adhere to that decision and to the views on which it was based. (For cases in which applications of the *McNabb* doctrine by circuit courts of appeals were left unchallenged by the Government, see *United States* v. *Haupt*, 136 F. 2d 661; *Gros* v. *United States*, 136 F. 2d 878; *Runnels* v. *United States*, 138 F. 2d 346.)

But the foundations for application of the *McNabb* doctrine are here totally lacking. Unlike the situation in other countries, see, for instance, §§ 25 and 26 of the Indian Evidence Act, 1872,[1] under the prevailing American criminal procedure, as was pointed out in the *McNabb* case, "The mere fact that a confession was made while in the custody of the police does not render it inadmissible." 318 U. S. at 346. Under the circumstances of this case, the

[1] § 25: "No confession made to a Police officer, shall be proved as against a person accused of any offence."

§ 26: "No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."

trial courts were quite right in admitting, for the juries' judgment, the testimony relating to Mitchell's oral confessions as well as the property recovered as a result of his consent to a search of his home. As the issues come before us the facts are not in dispute and are quickly told.

In August and early October 1942, two houses in the District of Columbia were broken into and from each property was stolen. The trail of police investigation led to Mitchell who was taken into custody at his home at 7 o'clock in the evening on Monday, October 12, 1942, and driven by two police officers to the precinct station. Within a few minutes of his arrival at the police station, Mitchell admitted guilt, told the officers of various items of stolen property to be found in his home and consented to their going to his home to recover the property.[2] It is these decisions and that property which supported the convictions, and which were deemed by the court below to have been inadmissible. Obviously the circumstances of disclosure by Mitchell are wholly different from those which brought about the disclosures by the McNabbs. Here there was no disclosure induced by illegal detention, no evidence was obtained in violation of any legal rights, but instead the consent to a search of his home, the prompt acknowledgement by an accused of his guilt, and the subsequent rueing apparently of such spontaneous cooperation and concession of guilt.

But the circumstances of legality attending the making of these oral statements are nullified, it is suggested, by what followed. For not until eight days after the statements were made was Mitchell arraigned before a committing magistrate. Undoubtedly his detention during this period was illegal. The police explanation of this illegality is that Mitchell was kept in such custody without protest through a desire to aid the police in clearing up thirty housebreakings, the booty from which was found in his home. Illegality is illegality, and officers of the law should deem themselves special guardians of the law. But in any event, the ille-

[2] In both cases Mitchell denied the testimony of the officers that he had in fact made prompt and spontaneous confession and consent to the search of his home, and on the basis of such denial motions were made to exclude the evidence. The trial judges ruled that whether these statements were in fact made in the circumstances narrated were questions of fact for the juries. As such they were left to the juries, and we here accept their verdict as did the court below. Mitchell, it must be emphasized, merely denied that he made these statements and so did not contest the time of making them. While at the trial there was a claim by Mitchell that he was abused by the police officers, in the state of the record that issue is not here.

gality of Mitchell's detention does not retroactively change the circumstances under which he made the disclosures. These, we have seen, were not elicited through illegality. Their admission, therefore, would not be use by the Government of the fruits of wrongdoing by its officers. Being relevant, they could be excluded only as a punitive measure against unrelated wrongdoing by the police. Our duty in shaping rules of evidence relates to the propriety of admitting evidence. This power is not to be used as an indirect mode of disciplining misconduct.

Judgment reversed.

Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE concur in the result.

Mr. Justice BLACK dissents.

Mr. Justice REED.

As I understand *McNabb* v. *United States*, 318 U. S. 332, as explained by the Court's opinion of today, the *McNabb* rule is that where there has been illegal detention of a prisoner, joined with other circumstances which are deemed by this Court to be contrary to proper conduct of Federal prosecutions, the confession will not be admitted. Further, this refusal of admission is required even though the detention plus the conduct do not together amount to duress or coercion. If the above understanding is correct, it is for me a desirable modification of the *McNabb* case.

However, even as explained I do not agree that the rule works a wise change in Federal procedure.

In my view detention without commitment is only one factor for consideration in reaching a conclusion as to whether or not a confession is voluntary. The juristic theory under which a confession should be admitted or barred is bottomed on the testimonial trustworthiness of the confession. If the confession is freely made without inducement or menace, it is admissible. If otherwise made, it is not, for if brought about by false promises or real threats, it has no weight as proper proof of guilt. *Wan* v. *United States*, 266 U. S. 1, 14; *Wilson* v. *United States*, 162 U. S. 613, 622; 3 Wigmore Evidence (1940 Ed.) § 882.

As the present record shows no evidence of such coercion, I concur in the result.